

# Cayman Islands Economic Substance Guide 2023 (Lexology Getting the Deal Through)

**Briefing Summary:** In this guide, lawyers from our Cayman office outline the latest economic substance requirements for businesses carrying on relevant activities in Cayman, including the legal framework, enforcement and demonstrating compliance.

**Service Area:** Corporate, Corporate Regulation and Compliance, Taxation and Economic Substance Requirements

**Sector:** Trust and Company Business

**Location:** Cayman Islands

**Content Authors:** Richard Munden

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## Legal Framework

### Legislation

What legislation sets out the economic substance requirements in your jurisdiction?

The economic substance requirements are set out in the International Tax Co-operation (Economic Substance) Act (as revised) (the ES Act) and certain regulations issued by the Cabinet of the Cayman Islands pursuant to the ES Act. The Tax Information Authority of the Cayman Islands has also issued guidance on understanding the scope of the ES Act and how to comply with the ES Act. The most recent version of the guidance was published in July 2022.

*Law stated - 31 January 2023*

### Relevant Entities

#### Legal Team



Richard Munden

PARTNER,  
CAYMAN ISLANDS

+1 345 749 2026

[EMAIL RICHARD](#)

## What types of entity are subject to the economic substance requirements in your jurisdiction?

The requirements of the ES Act apply to the following entities:

- Cayman Islands companies incorporated under the Companies Act (as revised) or the Limited Liability Companies Act (as revised);
- Cayman Islands limited liability partnerships registered under the Limited Liability Partnership Act, (as revised);
- General partnerships and limited partnerships under the Partnerships Act (as revised);
- Exempted Limited Partnerships and Foreign Limited Partnerships under the Exempted Limited Partnerships Act (as revised); and
- Non-Cayman Islands companies registered as foreign companies under the Companies Act (as revised).

The requirements that apply to a particular entity depend on whether that entity is a 'relevant entity' within the meaning of the ES Act. The following entities are not relevant entities:

- investment funds (including vehicles through which an investment fund invests);
- an entity that is tax resident outside the Cayman Islands; and
- a domestic company or local partnership (as defined in the ES Act).

All entities are required to submit annually an ES Notice (an ESN) to the Registrar of Companies that must be completed and submitted using an online portal. A relevant entity that carries on a 'relevant activity' is required to meet an economic substance test and submit an economic substance report to the Tax Information Authority.

*Law stated - 31 January 2023*

## Relevant Activities

### What activities trigger the economic substance requirements in your jurisdiction?

Relevant entities are required to satisfy an Economic Substance Test (an ES Test) if they carry on any of the following relevant activities:

- banking business;
- distribution and service centre business;
- financing and leasing business;
- fund management business;
- headquarters business;
- holding company business;
- insurance business;
- intellectual property business; and
- shipping business.

The scope of each of the above activities is defined in the ES Act. The Guidance in respect of the ES Act issued by the Tax Information Authority of the Cayman Islands contains further explanation of how those definitions should be construed, together with examples of relevant activity. If a relevant entity carries on more than one relevant activity then it is required to meet an ES Test in respect of each activity.

The Guidance provides that if a relevant entity carries on a relevant activity but does not generate any relevant income the entity is not obliged to meet the requirements of the ES Test in respect of that activity. However, the entity will still be required to satisfy its notification and reporting obligations.

Law stated - 31 January 2023

## Tax Residence Requirements

Must entities be tax resident (or deemed tax resident) in your jurisdiction to be subject to the economic substance requirements? If yes, what are the tax residence rules and requirements? If not, do the economic substance requirements in your jurisdiction differ with respect to non- resident entities?

The ES Act provides that entities that are tax resident outside the Cayman Islands are not considered to be relevant entities. The Guidance in respect of the ES Act issued by the Tax Information Authority of the Cayman Islands provides that an entity is tax resident outside the Cayman Islands if:

- it is subject to corporate income tax in another jurisdiction on all the income from the relevant activity; or
- it is a 'disregarded entity' for US income tax purposes and has a US corporation as its parent.

If the relevant activity is carried on by a branch of an entity then that branch will be considered to be tax resident outside the Cayman Islands if that branch is subject to corporate income tax in another jurisdiction on all of the income of that branch by reason of its domicile, residence or any other criteria of a similar nature.

Entities that are tax resident outside the Cayman Islands must confirm those details in an economic substance notice but are not required to satisfy an ES Test in respect of any relevant activity. In addition, the entity will be required to file an annual verification form on the Tax Information Authority's website and must produce evidence to the Authority substantiating the exemption claimed, such as a tax ID number or a tax residence certificate.

Law stated - 31 January 2023

Guidance

Has the government published guidance on the economic substance requirements?

The government has published four versions of guidance in relation to the requirements under the ES Act. The most recent, Version 3.2 (the Guidance), was issued in July 2022.

*Law stated – 31 January 2023*

## Economic Substance Requirements

### General Requirements

What general economic substance requirements apply in your jurisdiction?

All entities are required to submit annually an economic substance notice to the Registrar of Companies that must be completed and submitted using an online portal. A relevant entity that carries on a 'relevant activity' is required to meet an economic substance test and submit an economic substance report to the Tax Information Authority. A relevant entity that carries on the relevant activity of high-risk intellectual property business is required to submit certain additional information in its economic substance report.

If a relevant entity carries on a relevant activity it is required to satisfy an economic substance test (an ES Test). A reduced ES Test applies to a relevant entity that carries on holding company business.

A relevant entity that carries on a relevant activity other than holding company business will satisfy the ES Test if:

- it conducts in the Cayman Islands all core income-generating activities in relation to the relevant activity;
- it is directed and managed in an appropriate manner in the Cayman Islands in relation to the relevant activity; and
- having regard to the level of relevant income derived from the relevant activity carried out in the Cayman Islands it:
  1. has incurred adequate operating expenditure in the Cayman Islands;
  2. has adequate physical presence (including maintaining a place of business, or plant, property and equipment) in the Cayman Islands; and
  3. has an adequate number of full-time employees or other personnel with appropriate qualifications in the Cayman Islands.

'Relevant income' is defined as 'all of that entity's gross income from its relevant activities and recorded in its books and records under applicable accounting standards' .

A relevant entity that carries on holding company business will satisfy the ES Test if:

- it has complied with all applicable filing requirements under the Companies Law (as revised); and
- it has adequate human resources and adequate premises in the Cayman Islands for holding and managing equity participations in other entities.

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